

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

March 20, 2007

In the Matter of
Grace Griffiths

Docket No. 2006-183
File No. SDA
Hingham

RECOMMENDED FINAL DECISION ON RECONSIDERATION

Grace Griffiths filed a Motion for Reconsideration of the Commissioner's Final Decision which dismissed her appeal for lack of prosecution. An Order for a More Definite Statement was issued in the matter requiring the petitioner to file supplemental information to meet the requirements of a Claim for an adjudicatory hearing under 310 CMR 1.01(6)(b) by January 5, 2007. No documentation was submitted within the deadline established and the Claim was then dismissed.

The petitioner's Motion for Reconsideration asserts that she sent her response to the Order for a More Definite Statement to all the parties on the service list. She also explains "Due to a misunderstanding on my part, you did not receive a copy." The enclosed documents include a Response to the order, with a "cc" notation indicating a copy was sent to the applicant, the MassDEP regional staff person, and the Conservation Commission. She states that her Response was sent by mail on January 3, 2007 to the applicant and the Department's southeast regional staff person, and delivered by hand to the Conservation Commission. There is no indication that

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the documents were filed with this office or sent to the Presiding Officer before the deadline of January 5, 2007. The Motion for Reconsideration also recites a number of factual assertions concerning work at 218 Main Street and the historic use of the property in support of reconsideration, and requests that the appeal not be dismissed.

A motion to reconsider may be made when a finding of fact or ruling of law is clearly erroneous. 310 CMR 1.01(14)(e). When such a motion repeats matters adequately considered in the Final Decision, renews claims or arguments previously raised, or attempts to raise new claims or arguments it may be summarily denied. A party seeking to have a Final Decision modified on reconsideration bears a heavy burden to show that the prior result was unjustified. Matter of Billerica School Department, Docket No. 85-7, Decision on Reconsideration (March 11, 1986).

The Final Decision in this case was based on the petitioner's failure to respond to an Order. That Order included the following detailed instructions:

All submittals shall be filed with the Case Administrator of the MassDEP Office of Appeals and Dispute Resolution, at One Winter Street, 2nd Floor, Boston, MA 02108. A copy of the submittal shall be sent to all other parties as required by 310 CMR 1.01(4)(f), listed on the attached service list.

To these directions was added the following warning: "If the petitioners [sic] fail to file the more definite statement by January 5, 2007 the claim will be dismissed pursuant to 310 CMR 1.01(6)(b)." Order, p. 3. The petitioner acknowledges that a copy of her submittal was not filed with the Presiding Officer for the case record maintained by this office as described and required by the Order. Providing copies to other parties does not constitute filing. To "File" a pleading in an administrative appeal, a party must deliver the document by one of the authorized means to the Department's appeals office. 310 CMR 1.01(1)(c), 1.01(3)(a). "Papers required or permitted to be filed under 310 CMR 1.01, or any provision of the applicable law, must be filed with the

Presiding Officer and served on the parties within the time limits for such filing, as set by Department regulation or other provision of law.” 310 CMR 1.01(3)(a).

The petitioner has made no claim of erroneous finding of fact or ruling of law concerning her lack of a Response to this office in support of reconsideration. Instead, she asks that her misunderstanding be indulged, and the appeal allowed to move forward.¹ Given the explicit directions on how to file a response to the Order to File a More Definite Statement, the petitioner should have been aware of her obligation to prosecute her case and file her Response as instructed. As I find no error of fact or conclusion of law in the decision, I recommend that the petitioner’s Motion for Reconsideration be denied.

NOTICE

This decision is a Recommended Decision by the Presiding Officer on a Motion for Reconsideration. It has been transmitted to the Commissioner for her Final Decision on Reconsideration. This decision is therefore not a Final Decision on Reconsideration, and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner’s Final Decision on the Motion for Reconsideration is subject to appeal to court and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Decision on the Motion for Reconsideration or

¹ The petitioner’s factual allegations concerning the nature of the work proposed and performed, as well as the historic use of this property would not be addressed in this appeal of the Department’s dismissal of her request for a Superseding Order of Conditions (SOC), even if it were to continue. The challenged MassDEP decision is a dismissal of the petitioner’s request for an SOC based on her failure to notify and serve the applicant with her request. The issues would have been limited to whether the Department correctly found that the petitioner did not serve the applicant as required and the resulting consequence it imposed: dismissal of her SOC request.

any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion directs otherwise.

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Acting Commissioner Arleen O'Donnell March 23, 2007,